

AMENDED IN ASSEMBLY APRIL 12, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2332

Introduced by Assembly Member Monning
(Coauthor: Senator Simitian)

February 24, 2012

An act to ~~amend Sections 17207.6 and 24347.9 of~~ *add Sections 17207.11 and 24347.11* to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2332, as amended, Monning. Income taxes: deductions: disaster losses: County of Santa Cruz.

The Personal Income Tax Law and the Corporation Tax Law allow individual and corporate taxpayers to utilize net operating losses and carryovers and carrybacks of those losses for purposes of offsetting their individual and corporate tax liabilities. Existing law, for net operating losses incurred in taxable years beginning on or after January 1, 2008, provides a carryover period of 20 years and allows net operating losses attributable to taxable years beginning on or after January 1, 2013, to be carrybacks to each of the preceding 2 taxable years, as provided. Existing law disallows the deduction for net operating losses and net operating loss carryovers in the 2008 to 2011, inclusive, taxable years for a taxpayer with over a specified amount of business income and extends the carryover period for those net operating losses, thus allowing the taxpayer to have the same number of years to utilize the deduction as the taxpayer would have had if the disallowance for those taxable years had not occurred.

Existing law disallows net operating loss carrybacks for any net operating losses attributable to taxable years beginning before January 1, 2013, but would allow net operating losses attributable to taxable years beginning on or after January 1, 2013, to be carrybacks to each of the preceding 2 taxable years, as provided.

This bill would authorize a taxpayer to make an election to claim a deduction for any losses sustained in the County of Santa Cruz as a result of the severe storms that occurred in March 2011 on the tax return for the preceding year, as provided. This bill would provide that any provision of law that suspends, defers, reduces, or otherwise diminishes the deduction of a net operating loss does not apply to a net operating loss attributable to those severe storms that occurred in March 2011 in the County of Santa Cruz.

~~The Personal Income Tax Law and the Corporation Tax Law provide for the carryover to specified taxable years of specified losses sustained as a result of certain disasters occurring in California in an area determined by the President of the United States to warrant specified federal assistance, or proclaimed by the Governor to be in a state of emergency.~~

~~This bill would extend these provisions to losses sustained in the County of Santa Cruz as a result of the severe storms that occurred in March 2011. This bill would authorize a taxpayer to make an election to claim a deduction for those losses on the tax return for the preceding year.~~

This bill would make a legislative finding and declaration relating to the statewide public purpose served by the bill.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 17207.11 is added to the Revenue and*
- 2 *Taxation Code, to read:*
- 3 *17207.11. (a) Section 165(i) of the Internal Revenue Code*
- 4 *shall be applicable to any losses sustained in the County of Santa*
- 5 *Cruz as a result of the severe storms that occurred in March 2011.*
- 6 *(b) For losses described in subdivision (a), the election under*
- 7 *Section 165(i) of the Internal Revenue Code may be made on a*
- 8 *return or amended return filed on or before the due date of the*

1 *return, determined with regard to extension, for the taxable year*
2 *in which the disaster occurred.*

3 *(c) Unless specifically provided otherwise, any law that*
4 *suspends, defers, reduces, or otherwise diminishes the deduction*
5 *of a net operating loss shall not apply to a net operating loss*
6 *attributable to the loss described in subdivision (a).*

7 *SEC. 2. Section 24347.11 is added to the Revenue and Taxation*
8 *Code, to read:*

9 *24347.11. (a) Section 165(i) of the Internal Revenue Code*
10 *shall be applicable to any losses sustained in the County of Santa*
11 *Cruz as a result of the severe storms that occurred in March 2011.*

12 *(b) For losses described in subdivision (a), the election under*
13 *Section 165(i) of the Internal Revenue Code may be made on a*
14 *return or amended return filed on or before the due date of the*
15 *return, determined with regard to extension, for the taxable year*
16 *in which the disaster occurred.*

17 *(c) Unless specifically provided otherwise, any law that*
18 *suspends, defers, reduces, or otherwise diminishes the deduction*
19 *of a net operating loss shall not apply to a net operating loss*
20 *attributable to the loss described in subdivision (a).*

21 ~~SECTION 1. Section 17207.6 of the Revenue and Taxation~~
22 ~~Code is amended to read:~~

23 ~~17207.6. (a) An excess disaster loss, as defined in subdivision~~
24 ~~(e), shall be carried to other taxable years as provided in~~
25 ~~subdivision (b), with respect to losses resulting from any of the~~
26 ~~following disasters:~~

27 ~~(1) Any loss sustained in the Counties of Los Angeles and~~
28 ~~Monterey as a result of wildfires that commenced in August 2009.~~

29 ~~(2) Any loss sustained in the County of Placer as a result of~~
30 ~~wildfires that commenced in August 2009.~~

31 ~~(3) Any loss sustained in the Counties of Calaveras, Imperial,~~
32 ~~Los Angeles, Orange, Riverside, San Bernardino, San Francisco,~~
33 ~~and Siskiyou as a result of winter storms that commenced in~~
34 ~~January 2010.~~

35 ~~(4) Any loss sustained in the County of Kern as a result of the~~
36 ~~wildfires that commenced in July 2010.~~

37 ~~(5) Any loss sustained in the County of Santa Cruz as a result~~
38 ~~of the severe storms that occurred in March 2011.~~

39 ~~(b) (1) In the case of any loss allowed under Section 165(e) of~~
40 ~~the Internal Revenue Code, relating to limitation of losses of~~

1 individuals, any excess disaster loss shall be carried forward to
2 each of the five taxable years following the taxable year for which
3 the loss is claimed. However, if there is any excess disaster loss
4 remaining after the five-year period, then the applicable percentage,
5 as set forth in paragraph (1) of subdivision (b) of Section 17276,
6 of that excess disaster loss shall be carried forward to each of the
7 next 10 taxable years.

8 (2) The entire amount of any excess disaster loss as defined in
9 subdivision (e) shall be carried to the earliest of the taxable years
10 to which, by reason of subdivision (b), the loss may be carried.
11 The portion of the loss which shall be carried to each of the other
12 taxable years shall be the excess, if any, of the amount of excess
13 disaster loss over the sum of the adjusted taxable income for each
14 of the prior taxable years to which that excess disaster loss is
15 carried.

16 (e) “Excess disaster loss” means a disaster loss computed
17 pursuant to Section 165 of the Internal Revenue Code which
18 exceeds the adjusted taxable income of the year of loss or, if the
19 election under Section 165(i) of the Internal Revenue Code is
20 made, the adjusted taxable income of the year preceding the loss.

21 (d) The provisions of this section and Section 165(i) of the
22 Internal Revenue Code shall be applicable to any of the losses
23 listed in subdivision (a) sustained in any county or city in this state
24 which was proclaimed by the Governor to be in a state of disaster.

25 (e) Losses allowable under this section may not be taken into
26 account in computing a net operating loss deduction under Section
27 172 of the Internal Revenue Code.

28 (f) For purposes of this section, “adjusted taxable income” shall
29 be defined by Section 1212(b)(2)(B) of the Internal Revenue Code.

30 (g) For losses described in subdivision (a), the election under
31 Section 165(i) of the Internal Revenue Code may be made on a
32 return or amended return filed on or before the due date of the
33 return (determined with regard to extension) for the taxable year
34 in which the disaster occurred.

35 SEC. 2. Section 24347.9 of the Revenue and Taxation Code
36 is amended to read:

37 24347.9. (a) An excess disaster loss, as defined in subdivision
38 (e), shall be carried to other taxable years as provided in
39 subdivision (b), with respect to losses resulting from any of the
40 following disasters:

1 ~~(1) Any loss sustained in the Counties of Los Angeles and~~
2 ~~Monterey as a result of wildfires that commenced in August 2009.~~

3 ~~(2) Any loss sustained in the County of Placer as a result of~~
4 ~~wildfires that commenced in August 2009.~~

5 ~~(3) Any loss sustained in the Counties of Calaveras, Imperial,~~
6 ~~Los Angeles, Orange, Riverside, San Bernardino, San Francisco,~~
7 ~~and Siskiyou as a result of winter storms that commenced in~~
8 ~~January 2010.~~

9 ~~(4) Any loss sustained in the County of Kern as a result of the~~
10 ~~wildfires that commenced in July 2010.~~

11 ~~(5) Any loss sustained in the County of Santa Cruz as a result~~
12 ~~of the severe storms that occurred in March 2011.~~

13 ~~(b) (1) In the case of any loss allowed under Section 165 of the~~
14 ~~Internal Revenue Code, relating to losses, any excess disaster loss~~
15 ~~shall be carried forward to each of the five taxable years following~~
16 ~~the taxable year for which the loss is claimed. However, if there~~
17 ~~is any excess disaster loss remaining after the five-year period,~~
18 ~~then the applicable percentage, as set forth in paragraph (1) of~~
19 ~~subdivision (b) of Section 24416, of that excess disaster loss shall~~
20 ~~be carried forward to each of the next 10 taxable years.~~

21 ~~(2) The entire amount of any excess disaster loss as defined in~~
22 ~~subdivision (c) shall be carried to the earliest of the taxable years~~
23 ~~to which, by reason of subdivision (b), the loss may be carried.~~
24 ~~The portion of the loss which shall be carried to each of the other~~
25 ~~taxable years shall be the excess, if any, of the amount of excess~~
26 ~~disaster loss over the sum of the net income for each of the prior~~
27 ~~taxable years to which that excess disaster loss is carried.~~

28 ~~(c) "Excess disaster loss" means a disaster loss computed~~
29 ~~pursuant to Section 165 of the Internal Revenue Code, which~~
30 ~~exceeds the net income of the year of loss or, if the election under~~
31 ~~Section 165(i) of the Internal Revenue Code is made, the net~~
32 ~~income of the year preceding the loss.~~

33 ~~(d) The provisions of this section and Section 165(i) of the~~
34 ~~Internal Revenue Code shall be applicable to any of the losses~~
35 ~~listed in subdivision (a) sustained in any county or city in this state~~
36 ~~which was proclaimed by the Governor to be in a state of disaster.~~

37 ~~(e) Any corporation subject to the provisions of Section 25101~~
38 ~~or 25101.15 that has disaster losses pursuant to this section, shall~~
39 ~~determine the excess disaster loss to be carried to other taxable~~

1 years under the principles specified in Section 25108 relating to
2 net operating losses.

3 ~~(f) Losses allowable under this section may not be taken into~~
4 ~~account in computing a net operating loss deduction under Section~~
5 ~~172 of the Internal Revenue Code.~~

6 ~~(g) For losses described in subdivision (a), the election under~~
7 ~~Section 165(i) of the Internal Revenue Code may be made on a~~
8 ~~return or amended return filed on or before the due date of the~~
9 ~~return (determined with regard to extension) for the taxable year~~
10 ~~in which the disaster occurred.~~

11 SEC. 3. The Legislature finds and declares that this act fulfills
12 a statewide public purpose because all of the following:

13 (a) On April 15, 2011, the Governor of California made a finding
14 that conditions of extreme peril to public health and safety to
15 persons and property exist due to the severe storms occurring in
16 March 2011 in the County of Santa Cruz and proclaimed a state
17 of emergency to exist within that county, thus qualifying affected
18 persons for various forms of governmental assistance and relief.

19 (b) This act is consistent with, and supplements, the proclaimed
20 disaster assistance and relief by providing necessary tax relief to
21 the affected jurisdiction and persons to allow them to maintain
22 essential basic services and repair damage to, and restore, their
23 homes and businesses.

24 SEC. 4. This act provides for a tax levy within the meaning of
25 Article IV of the Constitution and shall go into immediate effect.